



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,905	11/03/2003	Ian Zetterstrom Smith	36245	5353

116 7590 07/06/2005

PEARNE & GORDON LLP  
1801 EAST 9TH STREET  
SUITE 1200  
CLEVELAND, OH 44114-3108

EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/699,905

**Applicant(s)**

SMITH, IAN ZETTERSTROM

**Examiner**

Christopher J. Novosad

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-5 and 19-28 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 29-31 is/are rejected.
- 7) ☒ Claim(s) 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

Claims 6-18 have been canceled.

### *Specification*

The abstract of the disclosure is objected to because it contains legal language, specifically "means" in lines 4, 5 and 8. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 30 and 31 are again rejected under 35 U.S.C. 102(b) as being anticipated by Allegretti *et al.* (USP 3,086,596) (hereinafter referred to as Allegretti) as follows:

Regarding claim 1, Allegretti discloses a lawn trimmer and edger (Figs. 1-4) comprising a cutting head (21,28,72) having a guard (17,73,74) housing a cutter means (15), a shaft (handle 18) for supporting the cutting head (21,28,72), roller means (11) rotatably mounted with respect to the cutting head (21,28,72), and drive means (13,33) for driving the cutter means (15), the roller means (11) being located entirely outside the guard (17,73,74) on the drive means side thereof, the cutting head being connected to the shaft (18) by connection means permitting the cutting head to be positioned with its cutter means either substantially horizontal or substantially vertical (Figs. 1, 5 and 8, at 87-91,95, see particularly col. 2, lines 42-51 and col. 5, lines 14-39 regarding converting the implement from an edger to a trimmer), the roller means (11) being

Art Unit: 3671

sized to contact the ground when the cutter means is substantially vertical and to circumscribe an axis of rotation of the drive means (Figs. 1 and 3), the arrangement being such that the cutter means extends beyond the circumference of the roller means (Figs. 1 and 3).

Regarding claim 2, the connection means of Allegretti (Figs. 1, 5 and 8 at 87-91 and 95), as discussed above, is clearly a “rotatable joint” (see particularly col. 5, lines 33-37 wherein the handle 18 is “turned in clockwise direction through approximately 45 degrees” for converting from an edger to a trimmer) as recited in the claim.

With respect to claim 30, the edger/trimmer of Allegretti (Fig. 3) shows the axis of rotation of the roller means to be “substantially coincident with the axis of rotation of the cutter means,” and regarding claim 31, shows that the radius of the roller means (11) “is of the order of, but slightly less than, the effective radius” of the cutter means (15), as broadly recited.

### **Claim Rejections – 35 USC § 103**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 29 is rejected under 35 USC 103 as unpatentable over Allegretti, as applied above to claim 1, in view of Marshall et al (Patent Application Publication US 2001/0034940).

Claim 29 distinguishes over Allegretti in requiring the “cutter means” to be “a rotatable cutter line” whereas Allegretti discloses the cutter means to be a circular, toothed blade 15 (Figs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted a conventional rotatable cutter line or cord-type cutter, e.g., as

Art Unit: 3671

disclosed in Marshall et al, for the circular, toothed, cutter blade in Allegretti because of the obvious higher safety benefit in using a cord-type cutter line as opposed to the higher probability of injury to an operator when using a motor-driven, circular, toothed, metal cutter blade.

***Rebuttal to Applicant's Arguments regarding the Claim Rejections***

Applicant's arguments in the response are mainly directed to the primary reference to Allegretti. Specifically, regarding claim 1, as amended, and dependent claims 2, 29, 30 and 31, applicant argues that Allegretti does not teach a trimmer having "roller means being located entirely outside the guard on the drive means side thereof," as required.

This argument, however, is not convincing because there are two roller means in Allegretti, one of which (roller 11) is located *entirely outside the guard* (17, 73, 74). The immediately following recitation, "*on the drive means side thereof*," fails to define any structural relationship that would distinguish these claims over Allegretti. In any event, the roller means (11) of Allegretti, is "entirely outside the guard" (17, 73, 74), and is shown in Fig. 3 to be located on a side of the drive means (13, 33), which is the same as "on the drive means side thereof," as broadly recited in the claims.

Applicant's arguments regarding the secondary reference to Marshall, as applied to dependent claim 29, are not deemed relevant to the rejection. In particular, applicant argues [1] that Marshall neither teaches nor suggests having "roller means being located entirely outside the guard on the drive means side thereof" as required, and [2] that "the vegetation trimming and edging device taught by Marshall does not include any roller means, and therefore cannot be said

Art Unit: 3671

to provide a suggestion or motivation to modify the teachings of Allegretti to include a roller means that is entirely outside a guard, as required.” These arguments, however, are not relevant to the rejection because Marshall was never relied on in the rejection of claim 29 for the teaching noted above, or to modify Allegretti in the manner stated in the argument. Accordingly, the arguments as to Marshall are not given weight.

### ***Allowable Subject Matter***

Claims 3-5 and 19-28 are allowed.

Dependent claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3671

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

June 29, 2005